systemair

General Purchasing Conditions of Company Systemair Deutschland GmbH

I. Scope of the Conditions

1. The Contracts between company Systemair Deutschland GmbH (hereinafter called „Customer") and its suppliers/ sub-suppliers (hereinafter called „Supplier") are solely subject to the following Purchasing Conditions.
2. Terms deviating from these terms, particularly General Terms and Conditions of the Supplier are not applicable albeit the Customer has not expressly excluded said terms in the individual case. Even if the Customer refers to a letter which contains General Terms and Conditions of the Supplier or a Third Party or refers thereto, it shall not imply an acceptance with the validity of said General Terms and Conditions.
3. Other agreements, modifications and ancillary agreements require explicit confirmation in writing by the Customer in order to become legally effective.

II. Quotation

1. If a quotation of the Supplier is submitted upon the Customer's request, the quotation is to correspond to the entire content of the inquiry particularly in terms of nature and quantity. Any deviation whatsoever must explicitly be mentioned in writing by the Supplier.
2. Quotations shall be submitted free of charge and shall not imply any liability of the inquiring party. Cost estimates shall only be remunerated upon special agreement.

III. Orders

1. Orders and/or order changes shall only be binding if they have been authorized and/or confirmed in writing by the Customer. The written form requirement shall be considered to have been observed if transmitted via telefax or email.
2. The Customer's documents used in the course of the business transaction with the Supplier particularly invoices shall include: order number, commission number, plant, receiving station, ident-no. item-no., complete item text/item denomination, quantities and quantity units as well as VAT-no. (If importing from the EU).
3. Should the Customer's orders refer to drawings, drawing indexes or other specifications which are unknown to the Supplier, the Supplier is to immediately request the mentioned documents.

IV. Prices

1. The prices are fixed prices. Unless otherwise agreed upon, the prices are free domicile including packaging, customs charges, toll, fuel, energy and if applicable, dangerous goods surcharges as well as freight insurance to the indicated shipping address / point of use.
2. The Supplier shall only be remunerated for surcharges of any kind as well as for unforeseen difficulties based on an especially agreed basic rate if the Customer has explicitly ordered the execution prior to the start of work / rendering of the performance. The amount of payment shall be agreed upon upfront in writing.

V. Order Processing, Employment of Subcontractors

1. The Customer's scope of performance among other things contains the following:

- The Supplier transfers the property of any technical document sent (even documents compiled by subcontractors) as well as all other documents which may be necessary for production from scratch, maintenance and operation to the Customer. Said technical documents are to be made up in German language and pursuant to the international System of Units (SI).
- The Supplier transfers all rights of use to the Customer or grants the Customer any right which may be required for the use of deliveries and performances by the Customer or a Third Party always heeding potential patents, supplementary protection certificates, brands or utility models.

2. The Supplier shall not be entitled to transfer the contract processing completely or in parts to a Third Party without prior written permission by the Customer.
3. Documents of any kind, which were conceded to the Supplier for processing the contract remain property of the Customer and are not to be used for any other purpose, copied or disclosed to Third Parties. The Customer is to be provided with all documents including duplicates or copies upon request.
4. The quantities ordered shall be binding. In case of oversupplies shall the Customer be entitled to return those over-supplies at the Supplier's expenses.
5. The Customer is to be notified immediately about changes or extensions of the scope of delivery/performance which

might prove necessary. The implementation of said changes or extensions requires prior written approval of the Customer.

VI. Quality, Safety and Environmental Protection

1. The Supplier is to conduct the deliveries and performances of this contract according to the agreed specifications in terms of delivery date, performance and professional manner under consideration of the legally applicable and official regulations in particular regulations with regard to safety and environmental protection as well as the established rules of technology.
2. In doing so the Supplier is to adhere to all relevant stipulations which may be in relation to the contract, especially DIN/EN, VDE, VDI, UVV, BG, VDMA 24186, mandatory manufacturer's specifications as well as guidelines of affected classification associations.
3. Upon the Customer's request, the Supplier is to prove a recognized QA certification pursuant to EN or ISO standards The Customer is to be notified without delay as to changes to the certification status according to ISO 9001 and 14001..
4. Test certificates, confirmations or evidence of the delivered products are to be supplied free of charge.

VII. Delivery Times/Delivery Dates

1. Agreed dates shall be binding. The Customer shall be entitled to refuse performance prior to the agreed delivery dates up to the date on which the delivery is due. The Supplier is to inform the Customer immediately in writing about any reasons which may lead the Supplier to exceed the agreed delivery deadlines.
2. In case the Supplier does not perform within the agreed delivery time, the Supplier shall be held liable pursuant to the legally applicable provisions. A possibly agreed penalty for delays in delivery in the course of § 340 Section 2 BGB [translator's remark: German Civil Code] shall remain unaffected.

VIII. Delivery and Storage

1. In case a price has been agreed to be „Ex Works" or „Ex Warehouse", the Customer is to pay only the most favorable freight charges.
2. The indicated shipping addresses are to be adhered to. Delivery to a different receiving station than the one stated by the Customer shall not incur transfer of risk for the Supplier albeit said receiving station accepts the consignment. The Supplier is to bear any additional costs of the Customer which may arise from delivery to a different receiving station other than the one agreed upon.
3. Partial deliveries are to be marked as such
4. In case the Supplier is entitled to have the packaging required for the delivery returned, the delivery notes are to be marked with clear instructions to this effect. In case of absent markings, the Customer shall dispose of the packaging at the Supplier's expenses and thus the Supplier's claim for returning of the packaging shall be void.
5. During transport the legally applicable provisions, particularly the terms of the law on the transportation of hazardous goods, regulations on environmental protection and the applicable ordinances on the transport of hazardous goods by road (GGVS) including any annexes and appendices are to be complied with. The Supplier shall be held liable for claims for damages which may arise from any violation to the afore-mentioned stipulations.
6. The Supplier is to ask for written confirmation at the stated receiving station about receipt of the consignments. The confirmation of receipt shall not be considered as recognition of proper performance of the contract but exclusively as confirmation of the receipt of goods.
7. The Supplier shall be obliged to conduct a final inspection of the goods and thus the Customer shall only be bound to perform a minimum inspection based on the delivery notes (identity and number of items), an inspection for transport damage, spot checks as well as an inspection for obvious external defects.

IX. Cancellation

1. The Customer shall be entitled to cancel this contract completely or in parts without stating any reasons. In said case, the Customer shall be obliged to pay for all deliveries and/or performances which have been rendered heretofore as well as to appropriately reimburse for the procured material and the rendered work; in addition to the afore-mentioned, § 649 sentence 2, 2 half sentence BGB shall be valid likewise. Further claims of the Supplier shall be excluded.

2. The Customer shall particularly and without limitation thereof be entitled to terminate the contract on important grounds, if legal insolvency proceedings have been initiated with respect to the Supplier's assets or the Supplier

ceases payments. The Customer shall be entitled to take over material and/or unfinished goods including possible special means of production at appropriate conditions.

X. Invoicing, Payment, Terms of Payment, Set-Offs

1. The invoice is to comply with the requirements of §§ 14, 14a UStG [translator's remark: German law on turnover taxation]. The invoice is insofar as no differing agreement has been made to be sent in duplicate to the invoice recipient indicated in the order and to the address stated therein separately indicating the order number, cost center and/ or project number of the Customer.
2. Payments are to be effected within 45 days with 3 % cash discount or within 60 days net without deduction unless otherwise agreed in writing. The period of payment shall start with the date of the first day after receipt of the invoice at the Customer's plant. Decisive for payments to be effected in time shall be the postmark stamp with crossed cheques and/or receipt of payment instructions at the bank. In case of absence of the details mentioned in Clause X.1 may lead to delays in processing, the stated payment periods shall be extended accordingly by the time of the delay.
3. Payment shall not imply any acceptance of conditions and prices.The time of payment shall not affect the Customer's warranty claims and the right to complain.
4. The Supplier shall only be entitled to set-off in case of uncontested or legally assessed claims..
5. Any delivery performed prior to the agreed date shall not affect any period of payment related to this date or otherwise agreed period of payment.

XI. Claims under Warranty

1. The Supplier shall be held liable that the Supplier's delivery/performance is of the agreed nature and suitable for the intended purpose.
2. The statutory period of limitation for claims from warranty shall commence with the complete supply of the scope of delivery and performance or provided acceptance has been agreed upon, with the acceptance.
3. The warranty period is 3 years, respectively 5 years and 6 months for goods which are used for a building in according with their customary use, as well as for goods which only become part of such a good customarily used for a building through further processing steps. The statutory period of limitation for reprimanded defects shall expire six months following the complaint at the earliest, but not before the end of the limitation period. The Supplier shall waive the excuse of a tardy claims for defects (§§ 377,381 Section 2 HGB [translator's remark: German Commercial Code]) with others than obvious defects
4. The Supplier shall eliminate reprimanded defects without delay. The costs of eliminating defects or replacement including all incidental expenses (e.g. freight) shall be borne by the Supplier. The legal rights of rescission, reduction or claim for damages shall remain unaffected thereof.
5. In case of poor performance of contractually owed standard performances which are conducted in short intervals on a rotational basis and which can thus not be rectified, the Customer shall be entitled to reduce the prices proportionally
6. The Supplier shall hold the Customer harmless from producer liability as well as on grounds of the Product Liability Act upon first request insofar as the damage is caused by a defect of the delivery item. The Supplier shall insofar bear all costs and expenses, including the legal costs and product recall costs unless the cause of the error was not in the Supplier's sphere of responsibility. The Supplier is to be informed about content and scope of the product recall measures to be carried out.
7. Upon the Customer's request, the Supplier is to submit proof of conclusion of an adequate product liability insurance.

XII. Place of Performance, Court of Jurisdiction

1. Place of performance for all deliveries/performances shall be the receiving station indicated by the Customer.
2. Place of jurisdiction shall be the Customer's location or at the Customer's choice the place of general jurisdiction of the Supplier.

XIII. Applicable Law

1. All legal relations between the Customer and the Supplier shall exclusively be governed by the legislation of the Federal Republic of German excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

XIV. Prohibition of Advertising / Non-Disclosure

1. Employment of inquiries, orders and related correspondence with the Customer for advertising purposes requires the Customer's explicit written agreement.
2. The Supplier shall maintain confidentiality from Third Parties about all operational processes, institutions, systems, documents etc. at the Customer and the Customer's clients which may be disclosed to the Supplier in the course of the Supplier's activities even after having submitted any quotations and/or termination of the contract. The Supplier shall likewise oblige the Supplier's vicarious agents and/or performing assistants.

XV. Partial Invalidity

1. If individual provisions of these terms shall become wholly or partly ineffective, this shall not affect the validity of the remaining provisions. In place of the ineffective part of the provisions, the Customer and the Supplier shall agree upon a legally valid provision as most closely approximates the intent of the invalid provision. The same shall apply in the event of a regulatory loophole.

XVI. Data Privacy

1. The contracting parties shall be obliged to adhere to the legal stipulations on data privacy as well as to grant compliance and monitoring thereof.

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